

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING BRYAN CODE OF ORDINANCES CHAPTER 62, LAND AND SITE DEVELOPMENT, SECTIONS 62-1 AND 62-167 AS WELL AS CHAPTER 110, SUBDIVISIONS, SECTIONS 110-4, 110-30, 110-31 AND 110-59, SPECIFICALLY BY ADDING A DEFINITION FOR “MAINTENANCE EASEMENT” AND REQUIRING DEDICATION OF SUCH EASEMENTS ON SUBDIVISION PLATS ON LOTS INTENDED FOR PATIO/ZERO LOT LINE HOME DEVELOPMENTS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR CODIFICATION; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THIS ORDINANCE WAS PASSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bryan has adopted Chapter 62, Land and Site Development, and Chapter 110, Subdivisions, of the City of Bryan Code of Ordinances; and

**WHEREAS**, the City Council recognizes the need from time to time to amend said chapters so as to identify and correct outdated or improve existing regulations; and

**WHEREAS**, the City’s development regulations allow for the development of single-family homes in a zero lot line/patio home arrangement, where one building wall of such a home is located on a side lot line (zero lot line); and

**WHEREAS**, the City’s development regulations currently do not guarantee zero lot line/patio home owners access to the exterior of building walls that are built on zero lot lines and that are accessible only by entering the abutting property; and

**WHEREAS**, the City Council recognizes a citizen’s right to protect, maintain and repair private property; and

**WHEREAS**, the Bryan Planning and Zoning Commission during its May 19, 2106 regular meeting recommended approval of the proposed amendments to Bryan Code of Ordinances Chapters 62 and Chapter 110; and

**WHEREAS**, the City Council has held a public hearing on the proposed amendments to Bryan Code of Ordinances Chapters 62 and 110 for which notice was published at least fifteen (15) days prior to the hearing date;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:**

1.

That the City Council finds and determines the foregoing recitals are true and correct and hereby makes them part of this ordinance.

2.

That Chapter 62, Land and Site Development, of the Bryan Code of Ordinances is hereby amended by adding a new definition for “maintenance easement” to Section 62-1., as follows:

**Sec. 62-1. – General Definitions.**

Maintenance easement shall mean a perpetual private access easement on the lot adjacent to a zero lot line, for the maintenance of the wall of a single-family dwelling built on the zero lot line. This required maintenance easement shall be in favor of the lot on which a zero lot line/patio home is planned at the boundary to which this easement is adjacent. The maintenance easement shall extend along the entire length of the side (zero) lot line to which it is adjacent and be dedicated by subdivision plat.

3.

That Chapter 62, Land and Site Development, of the Bryan Code of Ordinances is hereby amended by adding a new subsection 62-167(c) (6), as follows:

**Sec. 62-167. – Patio home requirements.**

**(c) Other Regulations.**

(6) All lots intended for zero lot line/patio home development shall have a maintenance easement as defined by Section 110-59 (d) (5) of the Subdivision Ordinance dedicated for their benefit.

4.

That Chapter 110, Subdivisions, of the Bryan Code of Ordinances is hereby amended by adding a new definition for “maintenance easement” to Section 110-4., as follows:

**Sec. 110-4. – Definitions.**

Maintenance easement shall have the meaning assigned in section 62-1 of the Land and Site Development Ordinance.

5.

That Chapter 110, Subdivision, be amended by modifying subsection 110-30 (b) (11), as follows:

**Sec. 110-30. – Preliminary Plan.**

**(b) Form and content**

(11) Location, size and purpose of all existing and proposed easements on or adjoining the subject property. This includes maintenance easements for zero lot line/patio home developments (see Sec. 110-59(d)(5)).

6.

That Chapter 110, Subdivision, be amended by modifying subsection 110-31(b) (4), as follows:

**Sec. 110-31. – Final Plat.**

**(b) Form and content**

(4)All on-site easements and associated off-site easements. This includes maintenance easements for zero lot line/patio home developments (see Sec. 110-59(d)(5)).

7.

That Chapter 110, Subdivisions, be amended by adding a new subsection 110-59(d) (5), as follows:

**Sec. 110-59. – Easements.**

(d) Easements

(5) Maintenance easements.

- a. Dedication of a maintenance easement shall be required on subdivision plats for properties intended for zero lot line/patio home development. The maintenance easement shall be a minimum of 7.5 feet in width and extend along the entire length of the side (zero) lot line to which it is adjacent.
- b. A note on the subdivision plat shall read: “Maintenance easements shown hereon shall be perpetual private access easements in favor of the lots on which a zero lot line/patio homes are planned at the boundaries to which these easements are adjacent” (see also Section 62-167 of the Land and Site Development Ordinance).

8.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

9.

That the Code of the City of Bryan, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

10.

That if any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

11.

That it is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001 et seq., Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

12.

It is the intention of the City Council that this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly

13.

That this ordinance shall take effect from and after its second and final reading.

PRESENTED AND GIVEN first reading the 7<sup>th</sup> day of June ,2016 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, PASSED AND APPROVED on the 12<sup>th</sup> day of July, 2016 by a vote of \_\_\_ yeses and \_\_\_ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

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Jason P. Bienski, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Janis K. Hampton, City Attorney

# Memorandum

To: Planning and Zoning Commission

From: Stephanie Doland, Staff Planner

Date: May 19, 2016

Re: proposed amendments to the text of Bryan Code of Ordinances Chapter 62, Land and Site Development, and Chapter 110, Subdivisions, specifically by adding a definition for “Maintenance Easement” and requiring dedication of such easements on subdivision plats on lots intended for patio/zero lot line home developments

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During the Planning and Zoning Commission workshop meeting on March 3, 2016, staff first presented the idea for a text amendment to require a maintenance easement for patio/zero lot line home developments, to help guarantee zero lot line/patio home owners access to the exterior of building walls that are built on zero lot lines and that are accessible only by entering the abutting property. At that meeting, Commissioners had no objections to scheduling a formal text amendment for a recommendation to the City Council on a future meeting agenda.

Chapter 62, Land and Site Development, of the Bryan Code of Ordinances outlines the current standards for patio homes including building setback lines, lot size, access and location of utilities. Currently the standards for patio/zero lot line home developments do not require any sort of a perpetual private access easement on the lot adjacent to a zero lot line, for the maintenance or repair of the wall of a single-family dwelling built on the zero lot line. Past patio/zero lot line home developments have addressed the issue by requiring such easements through private deed restrictions, as required by the International Residential Code (IRC).

If approved, requiring the dedication of a perpetual private maintenance easement by subdivision plat would help preserve a property owner’s right to access the adjacent property for repair and maintenance of the wall of the home built on the zero lot line. On the image below, the home on Lot 1 is built to the zero lot line. A maintenance easement for Lot 1 is located on Lot 2 adjacent to the wall of the home on Lot 1 built on the zero lot line and would guarantee the owner of the home on Lot 1 to maintain and repair one side of his/her home.



If the City desires to establish to propose standards for perpetual private maintenance easements, staff proposes the following amendments to Bryan Code of Ordinances Chapter 62, as well as Chapter 110, Subdivision:

- adding a definition for “maintenance easement” and include a cross-reference to Chapter 110; and
- adding language for the specific use standards for patio/zero lot line home, citing the requirement to dedicate maintenance easements for such developments; and
- citing the requirement to dedicate maintenance easements for patio/zero lot line home developments in “form and content” sections of the Subdivision Ordinance for preliminary plans and final plats; and
- requiring a note on subdivision plat for lots intended for patio/zero lot line home developments, explaining the purpose of the maintenance easement.

The attached draft ordinance proposes that the width of required maintenance easement be 7.5 feet, which is the distance required by the IRC and that such easements shall extend along the entire length of the side (zero) lot line to which it is adjacent.

If the City desires to establish to propose standards for perpetual private maintenance easements, Staff believes that the attached draft ordinance will help preserve property owners rights to access their property for maintenance and repair of, for example, gutters, façade, roofing materials and window treatments and recommends **approving** the proposed text amendment. Adopting new standards defining maintenance easements, requiring the dedication of such easements on subdivision plats and establishing standards for the size, length and location of maintenance easements will preserve property owner’s rights to access their private property for repair and maintenance purposes.

**EXCERPT FROM PLANNING AND ZONING COMMISSION REGULAR MEETING MINUTES  
OF MAY 19, 2016:**

**9. PROPOSED AMENDMENTS TO THE TEXT OF BRYAN’S CODE OF ORDINANCES – A  
PUBLIC HEARING WILL BE HELD FOR EACH ITEM (Commission makes  
recommendation; City Council has final approval).**

**a. Bryan Code of Ordinances Chapters 62 and 110**

*A recommendation to the Bryan City Council regarding proposed amendments to the text of Bryan Code of Ordinances Chapter 62, Land and Site Development, and Chapter 110, Subdivisions, specifically by adding a definition for “Maintenance Easement” and requiring dedication of such easements on subdivision plats on lots intended for patio/zero lot line home developments. (S. Doland)*

Ms. Doland presented the proposed text amendment to the Bryan Code of Ordinances Chapters 62 and 110. In response to questions, Ms. Doland responded that:

- There is generally not a time limit for maintenance associated with this definition in other cities
- Permission is still needed from the neighbor (owner) to access their private property
- If a building permit were required before this text amendment, it would still be required afterwards
- The easement is not meant for storage or other uses—only access

In response to questions, Mr. Leeper commented that although the City can’t have all the answers for how private citizens deal with each other, the language is common with other cities and will come down to whether the use of the easement is reasonable given the nature of the easement.

The public hearing was opened.

Mr. Bobby Jones 3514 Cavitt Ave., Bryan, TX, spoke regarding concerns about liability. He wondered whether he would theoretically be liable if someone were to be injured in the maintenance easement.

**Commissioner Incardona moved to recommend approval of the proposal to amend the text of Bryan Code of Ordinances Chapters 62 and 110, as presented, specifically by adding a definition for “maintenance easement” and requiring dedication of such easements on subdivision plats on lots intended for patio/zero lot line home developments. Commissioner Krolczyk seconded the motion, and the motion passed unanimously.**